

	cellar through the third floor. Large yards to the north and west of the building.
Adjacent Properties and Neighborhood Character	Single family homes to the west and south of the site (zoned R-1-B), and apartment building to the east, zoned RA-2. Grocery store and associated development to the north, part of PUD 08-15 - loading area for the grocery store is located directly to the north of the subject site, and 38 th Street serves as an entry point for the parking garage.
Proposal	Expand the floor area of the existing apartment building.

III. ZONING REQUIREMENTS AND RELIEF REQUESTED

The applicant proposes a large expansion of the existing building on site, but to maintain the permitted total of eight apartment units, which appear to be designed in a “co-living” or student housing format. Relief from the prohibition on expansion of nonconforming uses can be granted as a use variance from Subtitle C § 201.1 or § 204.1.

Item	Regulation	Existing	Proposed	Relief
Lot Width D 302	50 ft. min.	123.4 ft. (38 th Street frontage)	No change	Conforming
Lot Depth	n/a	138.6 ft. (Macomb St. frontage)	No change	Conforming
Lot Area D 302	5,000 min.	16,569 sq.ft.	No change	Conforming
Height D 303	40 ft., 3 stories max.	34 ft. 7-1/2 in. 3 stories + cellar	34 ft. 11 in. 3 stories + cellar	Conforming
Lot Occupancy D 304	40% max.	11% 1,822.6 sq.ft.	40% 6,627.6 sq.ft.	Conforming
Rear Yard D 306	25 ft. min.	27 ft. 11-1/4 in. (West side)	28.1 ft. (West side)	Conforming
Side Yard D 206	8 ft. min.	34 ft. 1-1/4 in. (North) 3 ft.- 7 ft. (South)	8 ft. (North) 3 ft.- 7 ft. (South)	Conforming Existing Nonconforming
Nonconforming uses C 204.1	Cannot expand nonconforming uses	9 apartment units (8 permitted)	8 apartment units with larger building footprint, floor area and number of bedrooms	Use Variance Requested

IV. ANALYSIS

Variance to Expand a Nonconforming Use– Subtitle C § 204.1

The applicant requested variance relief from Subtitle C § 201.1, a general prohibition on the expansion of nonconforming uses and structures. The more specific prohibition on the expansion of nonconforming uses can be found at C § 204.1. See the full text of that section below, followed by OP’s analysis of the variance test.

204 NONCONFORMING USE

204.1 A nonconforming use of land or structure shall not be extended in land area, gross floor area, or use intensity; and shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment of this title.

Variance Test

i. Extraordinary or Exceptional Situation or Condition Resulting in and Undue Hardship To the Property Owner

a. Extraordinary or Exceptional Situation

The application makes a number of statements about exceptional conditions, including an odd layout of the existing units, the lack of amenities in the existing building, the state of disrepair of the existing building, the need to update the units, and the large size of the property. The present structure does appear to be in need of renovations, and the property is larger than most other lots zoned R-1-B in the area. OP would not consider the layout of the units, or the lack of amenity space in a small apartment building to be an exceptional condition.

b. Undue Hardship

The applicant appears to claim that, given the scope of renovations, additional leasable floor area is required to recoup the costs. However, the application does not present any evidence or data to support this claim, and the existing building is being largely demolished. It is also not clear why the very large, proposed expansion of the nonconforming use would be necessary, rather than an addition more compatible with the existing building. The applicant also noted a subdivision option, which could include renovation of the existing apartment building and the creation of two new single-family lots – an option that would appear to be more consistent with the intent of the zoning.

The applicant also claims that their property at a disadvantage relative to apartment buildings in the adjacent RA-2 zone, which has higher lot occupancy allowances. OP does not accept that the zoning regulations themselves create a hardship, particularly for a non-conforming use.

In summary, OP does not feel that the applicant has presented a reasonable or acceptable case that there are exceptional circumstances resulting in an undue hardship to the owner, necessitating the very large extent of reconstruction and expansion of this non-conforming use.

ii. No Substantial Detriment to the Public Good

The submitted materials are not sufficient to evaluate whether granting a variance to expand as proposed would have a substantial detriment to the public good. The architectural drawings are extremely preliminary and incomplete, without locations of fenestration, and with no indication of materials. The application also does not include a shadow study, landscaping plan or lighting plan. In addition, the layout of the parking area may violate the prohibition on placing parking forward of the building line. While the proposed building would appear to meet dimensional standards, additional information would be required for a complete evaluation.

iii. No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations

The Regulations plainly intend to limit the expansion of a nonconforming use, in terms of “land area, gross floor area, or use intensity” (C § 204.1). The proposal would clearly violate this intent. The building footprint would increase by 264%, and the number of bedrooms would increase from 15 to 46. The nonconforming use would be significantly extended in area and, at least by bedroom count, significantly in intensity. OP therefore concludes that granting the variance would impair the intent of the Regulations.

V. COMMENTS OF OTHER DISTRICT AGENCIES

As of this writing the record contains no comments from other District agencies.

VI. ANC COMMENTS

As of this writing, the record does not contain a report from the ANC.

VII. COMMUNITY COMMENTS

The record contains two letters of support, at Exhibits 19 and 21.

VIII. VICINITY MAP

